

Memorandum



Date: February 13, 2007

B&F
Agenda Item No. 3(I)

To: Honorable Chairman Bruno A. Barreiro
and Members, Board of County Commissioners

From: George M. Burgos
County Manager

Subject: Ordinance Amending Section 2-11.1 of the Code of Miami-Dade County Relating to the Cone of Silence

RECOMMENDATION

It is recommended that the Board of County Commissioners (Board) approve the attached amendments to the current Cone of Silence legislation. These amendments are necessary to address limitations to management review and decision making related to vendor evaluation, selection and negotiations. These recommendations are consistent with those included in the Procurement Process Improvement Report submitted to the Board on February 1, 2006, and September 26, 2006. These recommendations received the full support of the Procurement Reform Advisory Board (PRAB). The recommendations noted in this report were also presented to the Government Structure Task Force. Mr. Robert Meyers, Executive Director, Commission on Ethics, participated in the PRAB's review process and discussions regarding the proposed amendments.

BACKGROUND

The Cone of Silence Legislation (Cone) is included in the Conflict of Interest and Code of Ethics Ordinance, and Section 2-11.1 sub item (t) of the County Code. Currently, the Cone restricts communications between vendors, bidders, lobbyists and the County's professional staff (including the County Manager and his or her staff) from the time a solicitation is advertised until the County Manager issues a written award recommendation. The Cone also restricts communications regarding solicitations between the Mayor, County Commissioners and their respective staff, and any member of the County's professional staff.

Certain restrictions in this legislation create unintended difficulties resulting in process delays and extended procurement cycle times. This restricts management's ability to discuss and resolve procurement issues to formulate best value recommendations. Where simple clarifications or matters arise that require instant consultation with County subject matter experts, written requests must be developed and/or public meetings convened.

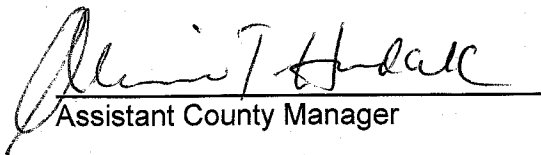
Under the current policy, where significant contracting issues arise that require consultation prior to making final recommendations, Selection Committee and procurement staff cannot brief the appropriate management and executive staff without a publicly noticed meeting. Additionally, staff cannot openly discuss these issues without preparing written requests and responses (with a copy issued to the Clerk of the Board), scheduling and holding public meetings, or until the County Manager issues a written recommendation. This is cumbersome, adds time to the process, and adversely affects staff's ability to effectively consult, and make best value decisions by tapping the subject matter expertise of County professionals and senior managers.

The need to consult in a professional environment is critical for arriving at sound procurement business decisions. The delays caused in observing the Cone of Silence legislation, and the reluctance to communicate (even for staff not covered under the Cone) for concern over potential violations of the legislation, continue to adversely affect the solicitation process.

Many solicitations require subject matter expertise and management consultation that may go beyond the knowledge and expertise of Selection Committee or professional purchasing staff. Procurements for technology solutions and other complex installations and rehabilitation work typically require additional clarifications and explanations within the procurement process. It is important to allow for appropriate internal consultation regarding procurement business decisions. There are issues that should be discussed with the County Manager and/or other management personnel prior to making final written award recommendations. The need for open lines for staff communications to arrive at the best procurement decisions is essential.

In its current form, Cone restrictions to communications among professional staff and their managers affect effectiveness and efficiency in the procurement process. It is therefore recommended that the Cone be amended, as follows:

- To allow for certain communications between any member the County's professional staff and any member of the selection committee, regarding a particular RFP, RFQ or bid. These communications are limited to matters regarding the responsiveness or responsibility of contractors, scheduling, need, clarification, market research, and timing of award. Any communications that would influence the selection committee's recommendations would be prohibited.
- To allow for communications between the County Manager and his or her professional staff that is not intended to influence the selection committee's recommendations, including but not limited to communications relating to the responsiveness or responsibility of contractors, scheduling, need, clarification, market research, and timing of award.
- To allow for communications between a potential vendor, service provider or bidder and employees of the Department of Procurement Management or other department identified in the solicitation document as the issuing department.
- To allow for consultations by employees of the Department of Procurement Management with professional procurement colleagues in determining an appropriate approach or option involving a solicitation in progress.


Assistant County Manager

Memorandum



Date:

To:

Honorable Chairman Bruno A. Barreiro
and Members, Board of County Commissioners

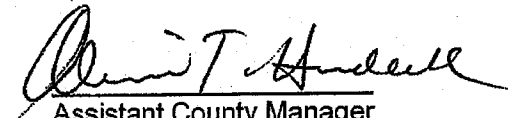
From:


George M. Borges
County Manager

Subject:

Ordinance Amending Section 2-11.1 of the Code of Miami-Dade County
Relating to the Cone of Silence

The proposed ordinance relating to the Cone of Silence will not have a fiscal impact to Miami-Dade County.


Assistant County Manager

Fls00106



MEMORANDUM

(Revised)

TO: Honorable Chairman Bruno A. Barreiro
and Members, Board of County Commissioners

DATE: October 10, 2006

FROM: Murray A. Greenberg
County Attorney

SUBJECT: Agenda Item No. 4(F)

Please note any items checked.

_____ "4-Day Rule" ("3-Day Rule" for committees) applicable if raised

_____ 6 weeks required between first reading and public hearing

_____ 4 weeks notification to municipal officials required prior to public hearing

_____ Decreases revenues or increases expenditures without balancing budget

_____ Budget required

_____ Statement of fiscal impact required

_____ Bid waiver requiring County Manager's written recommendation

_____ Ordinance creating a new board requires detailed County Manager's report for public hearing

_____ Housekeeping item (no policy decision required)

_____ No committee review

Approved _____ Mayor

Veto _____

Override _____

Agenda Item No. 4(F)

10-10-06

ORDINANCE NO. _____

ORDINANCE AMENDING THE CONE OF SILENCE IMPOSED UPON COUNTY COMPETITIVE PROCESSES; ALLOWING FOR COMMUNICATION BETWEEN THE BIDDER AND EMPLOYEES OF THE DEPARTMENT OF PROCUREMENT MANAGEMENT OR OTHER ISSUING DEPARTMENT; LIMITING PROHIBITION TO COMMUNICATIONS AMONG COUNTY STAFF TO THOSE NOT INTENDED TO INFLUENCE THE SELECTION COMMITTEE'S RECOMMENDATION; PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA:

Section 1 Section 2-11.1 of the Code of Miami-Dade County, Florida is hereby amended as follows:¹

Section 2-11.1. Conflict of Interest and Code of Ethics Ordinance.

* * *

(t) *Cone of Silence.*

1. Contracts for the provision of goods and service other than audit and independent private sector inspector general (IPSIG) contracts.
 - (a) "Cone of Silence" is hereby defined to mean a prohibition on:
 - (i) any communication regarding a particular RFP, RFQ or bid between a potential vendor, service provider, bidder, lobbyist, or consultant and the County's professional staff including, but not limited to, the County Manager and his or her staff, >>except as specifically set forth below<<;
 - (ii) any communication regarding a particular RFP, RFQ or bid between the Mayor, County Commissioners or their respective staffs and any member of the County's professional staff including, but not limited to, the County Manager and his or her staff;

¹ Words stricken through and/or [[double bracketed]] shall be deleted. Words underscored and/or >>double arrowed<< constitute the amendment proposed. Remaining provisions are now in effect and remain unchanged.

5

- (iii) any communication regarding a particular RFP, RFQ or bid between a potential vendor, service provider, bidder, lobbyist, or consultant and any member of the selection committee therefor;
- (iv) any communication regarding a particular RFP, RFQ or bid between the Mayor, County Commissioners or their respective staffs and any member of the selection committee therefor;
- (v) any communication regarding a particular RFP, RFQ or bid between a potential vendor, service provider, bidder, lobbyist, or consultant and the Mayor, County Commissioners and their respective staffs; and
- (vi) any communication regarding a particular RFP, RFQ or bid between any member the County's professional staff and any member of the selection committee therefor, >>intended to influence the selection committee's recommendations. This prohibition shall not preclude, without limitation, communications relating to the responsiveness or responsibility of contractors, scheduling, need, clarification, market research, and timing of award.<<

~~[[The County Manager and the Chairperson of the selection committee may communicate about a particular selection committee recommendation, but only after the committee has submitted an award recommendation to the Manager and provided that should any change occur in the committee recommendation, the content of the communication and of the corresponding change shall be described in writing and filed by the Manager with the Clerk of the Board and be included in any recommendation memorandum submitted by the Manager to the Board of County Commissioners.]]~~

Notwithstanding the foregoing, the Cone of Silence shall not apply to

- (i) competitive processes for the award of CDBG, HOME, SHIP and Surtax Funds administered by the Miami-Dade County Office of Community and Economic Development and the community-based organization (CBO) competitive grant processes administered by the Park and Recreation, Library, Water and Sewer, and Solid Waste Departments, Cultural Affairs and Tourist Development Councils and the Department of Environmental Resources Management;
- (ii) communications with the County Attorney and his or her staff;
- >>(iii) communications with the County Manager and his or her professional staff not intended to influence the selection committee's recommendations, including but not limited to communications relating to the responsiveness or responsibility of contractors, scheduling, need, clarification, market research, and timing of award;<<
- ~~[[~~(iii)~~]]~~ >>(iv)<< communications between a potential vendor, service provider, bidder, consultant or lobbyist and employees of the Management and Technical Assistance Unit of the Department of Business Development regarding small business and/or minority business programs, the Community Business Enterprise and Equitable Distribution Programs;
- ~~[[~~(iv)~~]]~~ >>(v)<< communications between a potential vendor, service provider, bidder, consultant or lobbyist and employees responsible for administering disadvantaged business enterprise programs in County departments receiving

federal funds, provided the communications are limited strictly to matters of programmatic process or procedure;

[[~~(v)~~]] >>(vi)<< duly noticed site visits to determine the competency of bidders regarding a particular bid during the time period between the opening of bids and the time the County Manager makes his or her written recommendation;

[[~~(vi)~~]] >>(vii)<< any emergency procurement of goods or services pursuant to Administrative Order 3-2;

[[~~(vii)~~]] >>(viii)<< communications regarding a particular RFP, RFQ or bid between any person and the Vendor Information Center staff, the procurement agent or contracting officer responsible for administering the procurement process for such RFP, RFQ or bid, provided the communication is limited strictly to matters of process or procedure already contained in the corresponding solicitation document; and

[[~~(viii)~~]] >>(ix)<< ~~[[communications regarding a particular RFP, RFQ or bid between the procurement agent or contracting officer, or their designated secretarial/clerical staff responsible for administering the procurement process for such RFP, RFQ or bid and a member of the selection committee therefor provided the communication is limited strictly to matters of process or procedure already contained in the corresponding solicitation document.]]~~
>>communications between a potential vendor, service provider or bidder and employees of the Department of Procurement Management or other department identified in the solicitation document as the issuing department;

(x) consultations by employees of the Department of Procurement Management with professional procurement colleagues in determining an appropriate approach or option involving a solicitation in progress.<<

(b) Procedure.

(i) A Cone of Silence shall be imposed upon each RFP, RFQ and bid after the advertisement of said RFP, RFQ or bid. At the time of imposition of the Cone of Silence, the County Manager or his or her designee shall provide for public notice of the Cone of Silence. The County Manager shall issue a written notice thereof to the affected departments, file a copy of such notice with the Clerk of the Board, with a copy thereof to each Commissioner, and shall include in any public solicitation for goods and services a statement disclosing the requirements of this ordinance. ~~[[Notwithstanding any other provision of this Section, the imposition of a Cone of Silence on a particular RFP, RFQ or bid shall not preclude staff from obtaining industry comment or performing market research therefor provided all communications related thereto between a potential vendor, service provider, bidder, lobbyist, or consultant and any member of the County's professional staff including, but not limited to, the County Manager and his or her staff are in writing or are made at a duly noticed public meeting.]]~~

(ii) The Cone of Silence shall terminate at the time the Manager makes his or her written recommendation to the County Commission; provided, however, that if the Commission refers the Manager's recommendation back to the Manager or

staff for further review, the Cone of Silence shall be reimposed until such time as the Manager makes a subsequent written recommendation. The foregoing notwithstanding, for contracts and purchases which the County Manager has the delegated authority to award under Sec. 2-8.1(b) of this Code, the Cone of Silence shall terminate: (i) at the time the award recommendation letter is issued and filed with the Clerk of the Board for such contracts and purchases involving the expenditure of over one hundred thousand dollars (\$100,000); (ii) at the time the written award recommendation is posted in accordance with Section III of A.O. 3-21 for such contracts or purchases involving the expenditure of over \$25,000 up to \$100,000; or (iii) at the time the award recommendation is issued in accordance with Section IV of A.O. 3-21 for contracts and purchases involving the expenditure of \$25,000 or less.

- (c) *Exceptions.* The provisions of this ordinance shall not apply to oral communications at pre-bid conferences, oral presentations before selection committees, contract negotiations during any duly noticed public meeting, public presentations made to the Board of County Commissioners during any duly noticed public meeting or communications in writing at any time with any county employee, official or member of the Board of County Commissioners unless specifically prohibited by the applicable RFP, RFQ or bid documents. The bidder or proposer shall file a copy of any written communication with the Clerk of the Board. The Clerk of the Board shall make copies available to any person upon request.

2. *Audit and IPSIG contracts.*

- (a) "Cone of Silence" is hereby defined to mean a prohibition on: (a) any communication regarding a particular RFP, RFQ or bid between a potential vendor, service provider, bidder, lobbyist, or consultant and the Mayor, County Commissioners or their respective staffs and any member of the County's professional staff including, but not limited to, the County Manager and his or her staff >> except as specifically set forth below<<; ~~[[and]]~~ (b) any oral communication regarding a particular RFP, RFQ or bid between the Mayor, County Commissioners or their respective staffs and any member of the County's professional staff including, but not limited to, the County Manager and his or her staff >>; and (c) any communication regarding a particular RFP, RFQ or bid between any member the County's professional staff and any member of the selection committee therefore, intended to influence the selection committee's recommendations. This prohibition shall not preclude, without limitation, communications relating to the responsiveness or responsibility of contractors, scheduling, need, clarification, market research, and timing of award<<. Notwithstanding the foregoing, the Cone of Silence shall not apply to >>: (a) << communications with the County Attorney and his or her staff >>; (b) communications with the County Manager and his or her professional staff not intended to influence the selection committee's recommendations, including but not limited to communications relating to the responsiveness or responsibility of contractors, scheduling, need, clarification, market research, and timing of award; (c) communications between a potential vendor, service provider or bidder and employees of the Department of Procurement Management or other department identified in the solicitation document as the issuing department; and (d) consultations by employees of the Department of Procurement Management with

professional procurement colleagues in determining an appropriate approach or option involving a solicitation in progress.<<

- (b) Except as provided in Subsections 2(c) and 2(d) hereof, a Cone of Silence shall be imposed upon each RFP, RFQ and bid for audit and IPSIG services after the advertisement of said RFP, RFQ or bid. At the time of the imposition of the Cone of Silence, the County Manager or his or her designee shall provide for the public notice of the Cone of Silence. The Cone of Silence shall terminate when the County Manager executes a particular audit or IPSIG contract.
 - (c) Nothing contained herein shall prohibit any bidder or proposer: (i) from making public presentations at duly noticed pre-bid conferences or before duly noticed selection committee meetings; (ii) from engaging in contract negotiations during any duly noticed public meeting; or (iii) from communicating in writing with any County employee or official for purposes of seeking clarification or additional information from the County or responding to the County's request for clarification or additional information, subject to the provisions of the applicable RFP, RFQ or bid documents. The bidder or proposer shall file a copy of any written communication with the Clerk of the Board. The Clerk of the Board shall make copies available to the general public upon request.
 - (d) Nothing contained herein shall prohibit any lobbyist, bidder, proposer or other person or entity from publicly addressing the Board of County Commissioners during any duly noticed public meeting regarding action on any audit or IPSIG contract. The County Manager shall include in any public solicitation for auditing or IPSIG services a statement disclosing the requirements of this ordinance.
3. *Penalties.* In addition to the penalties provided in Subsections (s) and (v) hereof, violation of this Subsection (t) by a particular bidder or proposer shall render any RFP award, RFQ award or bid award to said bidder or proposer voidable. Any person who violates a provision of this ordinance shall be prohibited from serving on a Miami-Dade County competitive selection committee. In addition to any other penalty provided by law, violation of any provision of this ordinance by a Miami-Dade County employee shall subject said employee to disciplinary action up to and including dismissal. Additionally, any person who has personal knowledge of a violation of this ordinance shall report such violation to the State Attorney and/or may file a complaint with the Ethics Commission.
4. The requirements of Section 2-11.1(t) shall not apply to any municipality in Miami-Dade County that has adopted an ordinance providing that the cone of silence shall not apply to that municipality. Any municipality that opts out of the requirements of Section 2-11.1(t) shall provide the Ethics Commission with a copy of the ordinance.

Section 2. If any section, subsection, sentence, clause or provision of this ordinance is held invalid, the remainder of this ordinance shall not be affected by such invalidity.

Section 3. It is the intention of the Board of County Commissioners, and it is hereby

ordained that the provisions of this ordinance shall become and be made a part of the Code of Miami-Dade County, Florida. The sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

Section 4. If any section, subsection, sentence, clause or provision of this ordinance is held invalid, the remainder of this ordinance shall not be affected by such invalidity.

Section 5. It is the intention of the Board of County Commissioners, and it is hereby ordained that the provisions of this ordinance, including any Sunset provision, shall become and be made a part of the Code of Miami-Dade County, Florida. The sections of this ordinance may be renumbered or re-lettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate work.


Section 6. This ordinance shall become effective 10 days after the date of enactment unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

PASSED AND ADOPTED:

Approved by County Attorney as
to form and legal sufficiency.



Prepared by:



Hugo Benitez